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regional variations in price consistent with those prices established under the FCIA or NAP.

§ 760.641 Adjustments made to NAMP to reflect loss of quality.

(a) The Deputy Administrator will authorize FSA county committees, with FSA State committee concurrence, to adjust NAMP for a county or part of a county:

(1) To reflect the average quality discounts applied to the local or regional market price of a crop due to a reduction in the intrinsic characteristics of the production resulting from adverse weather, as determined annually by the State office of the FSA; or

(2) To account for a crop for which the value is reduced due to excess moisture resulting from a disaster related condition.

(3) For adjustments specified in paragraphs (a)(1) and (a)(2) of this section, an adjustment factor that represents the regional or local price received for the crop in the county will be calculated by the FSA State committee. The adjustment factor will be based on the average actual market price compared to NAMP.

(b) For adjustments made under paragraph (a) of this section, participants must provide verifiable evidence of actual or appraised production, clearly indicating an average loss of value caused by poor quality or excessive moisture that meets or exceeds the quality adjustment for the county or part of a county established in paragraph (a)(3) of this section to be eligible to receive the quality-adjusted NAMP as part of their SURE payment calculation. In order to be considered at all for the purpose of quality adjustments, the verifiable evidence of production must itself detail the extent of the quality loss for a specific quantity. With regard to test evidence, in addition to meeting all the requirements of this section, tests must have been completed by January 1 of the year following harvest.

§ 760.650 Calculating SURE.

(a) Subject to the provision of this subpart, SURE payments for crop losses in crop year 2008 and subsequent crop years will be calculated as the

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amount equal to 60 percent of the difference between:

(1) The SURE guarantee, as specified in § 760.631, § 760.633 or § 760.634 of this subpart, and

(2) The total farm revenue, as specified in § 760.635.

(b) In addition to the other provisions of this subpart and subpart B of this part, SURE payments may be adjusted downward as necessary to insure compliance with the payment limitations in subpart B and to insure that payments do not exceed the maximum amount specified in § 760.108(a)(1) or (b)(1) or otherwise exceed the perceived intent of 19 U.S.C. 2497(j). Such adjustments can include, but are not limited to, adjustments to insure that there is no duplication of benefits as specified in § 760.108(c).

Subpart H—Crop Assistance Program

AUTHORITY: 7 U.S.C. 612c.

SOURCE: 75 FR 65428, Oct. 25, 2010, unless otherwise noted.

§ 760.701 Applicability.

(a) This subpart specifies the eligibility requirements and payment calculations for the Crop Assistance Program (CAP), which will be administered using funds authorized by Section 32 of the Agricultural Adjustment Act of 1935 (7 U.S.C. 612c, as amended).

(b) CAP, within the limits of the funds made available by the Secretary for this program, is intended to help re-establish purchasing power to producers of long grain rice, medium or short grain rice, upland cotton, soybeans, and sweet potatoes who suffered a five percent or greater loss in the 2009 crop year due to disaster.

(c) Only producers who have a share in a farm located in a disaster county (a county that is the primary county that is the subject of a Secretarial disaster designation for 2009 crop year due to excessive moisture and related conditions, as determined by FSA) are eligible for CAP benefits.

§ 760.702 Definitions.

The following definitions apply to CAP. The definitions in parts 718, 760,

and 1400 of this title also apply, except where they conflict with the definitions in this section.

Acceptable production records means verifiable or reliable production records deemed acceptable by FSA.

Application means the CAP application form.

Application period means the 45-day period established by the Deputy Administrator for producers on farms in disaster counties to apply for CAP that ends December 9, 2010.

Approved yield means the amount of production per acre, computed in accordance with FCIC's Actual Production History (APH) Program at part 400, subpart G of this title or, for crops not included under part 400, subpart G of this title, the yield used to determine the guarantee. For crops covered under NAP, the approved yield is established according to part 1437 of this title.

Considered planted means acreage approved as prevented planted or failed in accordance with § 718.103 of this chapter.

Crop means the reported or determined 2009 crop year planted and considered planted acres of long grain rice, medium or short grain rice, upland cotton, soybean, or sweet potatoes as reflected on 2009 crop year form FSA-578, Report of Acreage, for a producer in a disaster county as of October 22, 2010. Subsequent crops, replacement crops, reseeded crops, and replanted crops are not eligible crops under this part and no revision of the Report of Acreage that would increase an eligibility for payment will be permitted to produce that effect.

Crop year means for 2009:

(1) For insurable crops, the crop year as defined according to the applicable crop insurance policy;

(2) For NAP covered crops, the crop year as provided in part 1437 of this title.

Disaster means excessive moisture or related condition, resulting from any of the following: flood, flash flooding, excessive rain, moisture, humidity, severe storms, thunderstorms, ground saturation or standing water, hail, winter storms, ice storms, snow, blizzard, hurricane, typhoons, tropical storms, and cold wet weather. A disaster does

not include brownouts or power failures.

Disaster county means a county included in the geographic area covered by a qualifying natural disaster designation under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)). For CAP, the term "disaster county" is limited to those primary counties declared a disaster by the Secretary for excessive moisture or a related condition, which are limited to designations based on any of the following: flood, flash flooding, excessive rain, moisture, humidity, severe storms, thunderstorms, ground saturation or standing water, hail, winter storms, ice storms, snow, blizzard, hurricane, typhoons, tropical storms, and cold wet weather.

Expected production means, for a producer on a farm who attempts to determine what the producer might produce for an eligible crop on a farm, the historic yield multiplied by the producer's share of planted and considered planted acres of the crop for the farm. Expected production may be used to assist producers in determining whether the producer has a crop or crops that suffered a qualifying loss of five percent and to determine whether that crop is eligible for CAP benefits.

Historic yield means, for a producer on a farm, the higher of the county average yield or the producer's approved yields for eligible crops on the farm.

(1) An insured producer's yield will be the higher of the county average yield listed or the approved federal crop insurance APH, for the disaster year.

(2) A NAP producer's yield will be the higher of the county average yield or NAP approved yield for the disaster year.

Replacement crop means the planting or approved prevented planting of any crop for harvest following the failed planting or prevented planting of a crop of long grain rice, medium or short grain rice, upland cotton, soybeans, or sweet potatoes not in a recognized double-cropping sequence. Replacement crops are not eligible for CAP.

Reseeded or replanted crop means the second planting of a crop of long grain

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rice, medium or short grain rice, upland cotton, soybeans, or sweet potatoes on the same acreage after the first planting of that same crop that failed.

§ 760.703 Producer eligibility requirements.

(a) A producer must meet all of the requirements in this subpart to be eligible for a CAP payment.

(b) To be eligible, a producer must be an individual or entity who is entitled to an ownership share of an eligible crop and who has the production and market risks associated with the agricultural production of the crop on a farm. An eligible producer must be a:

- (1) Citizen of the United States;
- (2) Resident alien, which for purposes of this subpart means "lawful alien" as defined in 7 CFR part 1400;
- (3) Partnership of citizens of the United States; or
- (4) Corporation, limited liability corporation, or other farm organizational structure organized under State law.

(c) To be eligible, a producer must have:

- (1) Produced a 2009 crop year planted or considered planted long grain rice, medium or short grain rice, upland cotton, soybean, or sweet potato crop in a 2009 eligible disaster county, and
- (2) Suffered a five percent or greater loss in an eligible disaster county in 2009. A list of the disaster counties for CAP is available on the FSA Web site and at FSA county offices.

§ 760.704 Time and method of application.

(a) To request a CAP payment, the producer must submit a CAP application on the form designated by FSA to the FSA county office responsible for administration of the farm.

(b) Producers submitting an application for a crop must certify that they suffered a five percent or greater loss of the crop on the farm in a disaster county and that they have documentation to support that certification as required in § 760.713.

(c) Once submitted by a producer, the application is considered to contain information and certifications of and pertaining to the producer's crop and farm regardless of who entered the information on the application.

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(d) Producers requesting benefits under CAP must certify the accuracy and truthfulness of the information provided in the application as well as with any documentation that may be provided with the application or documentation that will be provided to FSA in substantiation of the application. All certifications and information are subject to verification by FSA.

(e) Producers applying for CAP must certify that they have an eligible ownership share interest in the 2009 crop acreage that sustained a five percent or greater loss. The determination and certification by a producer that a crop suffered the requisite five percent or greater farm crop loss is the expected quantity of production of the crop less the actual production of the crop.

(f) In the event that the producer does not submit documentation in response to any request of FSA to support the producer's application or documentation furnished does not show a crop loss of at least five percent as claimed, the application for that crop will be disapproved in its entirety. For quantity losses, producers need to apply a standard similar to the historic yield provisions used under previous ad hoc disaster programs. Those provisions provided that a historic yield was the higher of a county average yield or a producer's approved yield. Thus, if an applicant is determining whether a farm has a crop that suffered a loss of five percent or greater on the farm's planted and considered planted acreage, the applicant could compare the amount successfully produced in 2009 from those planted and considered planted acres to what the participant expected to produce from that acreage using either the county average yield (which may be obtained from FSA by request) or based on analysis of approved actual production history yields that may exist for producers of the crop on the farm.

(g) Unless otherwise determined necessary by FSA, producers will not be required to submit documentation of farm crop production or loss at time of application. FSA's decision not to require proof, documentation, or evidence in support of any application at